Nos. 81-31, 81-228 and 81-455

In the Supreme Court of the United States

OCTOBER TERM, 1981

CALIFORNIA, ET AL., APPELLANTS

v.

GRACE BRETHREN CHURCH, ET AL.

UNITED STATES, ET AL., APPELLANTS

v.

GRACE BRETHREN CHURCH, ET AL.

GRACE BRETHREN CHURCH, ET AL., CROSS-APPELLANTS

v.

UNITED STATES, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

REPLY BRIEF FOR THE UNITED STATES

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1. Appellee Grace Brethren Church points to 13 potential areas of state inquiry into religious beliefs in benefit determination proceedings (Br. 7-8). But most such inquiries would be relevant *only* if the employer school failed to establish a work rule requiring the teacher to conform to the

principal's interpretation of doctrinal and moral matters, as suggested in our main brief at 28-29.[1] Any possible entanglement of the state in the school's religious affairs that results solely from the school's own failure to establish such a work rule should not be a basis for excusing the school from its tax obligation on First Amendment grounds. Cf. *United States* v. *Lee*, No. 80-767 (Feb. 23, 1982), (Stevens, J., concurring), slip op. 3 n.3.

2. Appellee Grace Brethren's Free Exercise Clause arguments are substantially answered by this Court's recent decision in *United States* v. *Lee*, *supra*. In rejecting the claim by an employer to a religious exemption from the payment of Social Security and unemployment taxes (slip op. 2 n.1), the Court reaffirmed the teaching of *Braunfeld* v. *Brown*, 366 U.S. 599 (1961), and its applicability "in attempting to accommodate religious beliefs in the area of taxation" (slip op. 6).[2] Thus, contrary to respondent's contentions (Br. 32-34), the district court here correctly recognized that "[t]he state may justify a limitation on religious liberty by showing that it is essential to accomplish

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[1]Two other examples (Appellee Br. 7 para. c, 8 para. f) involve situations in which the issue is whether the employee's discharge is due to misconduct or to incompetence; that issue would not seem to require any peculiarly religious determination. Instead, it requires an evaluation of the employee's abilities and his attitude toward his employer i.e., whether his default was intentional or not, rather than whether he committed a default.

Appellees' concern that the state may be required to determine whether a religious body is a church (*id.* at 8 para. j) is apparently not shared by this Court or the other courts that have faced similar problems under the Internal Revenue Code. See, *e.g.*, *St. Martin Evangelical Lutheran Church* v. *South Dakota*, 451 U.S. 772, 784 n.15 (1981) and cases there cited.

[2]In this case, as in *Lee* (slip op. 4), it is appropriate to accept the employer's assertion that "both payment and receipt of * * * benefits is forbidden by the [religious] faith" of the employer and his employees.

an overriding governmental interest" (*United States* v. *Lee*, *supra*, slip op. 5), and struck the balance in favor of the important goals served by the unemployment tax system (compare J.S. App. 64a-65a with *United States* v. *Lee*, *supra*, slip op. 7). As this Court explained in *United States* v. *Lee*, *supra*, (slip op. 8; footnote omitted):

> Congress and the courts have been sensitive to the needs flowing from the Free Exercise Clause, but every person cannot be shielded from all the burdens incident to exercising every aspect of the right to practice religious beliefs. When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity. Granting an exemption from social security [and unemployment] taxes to an employer operates to impose the employer's religious faith on the employees. * * * The tax imposed on employers to support the [benefit] system must be uniformly applicable to all, except as Congress provides explicitly otherwise.

Appellees cannot avoid the force of this conclusion, or its applicability to their identical claim to an exemption from unemployment taxes, by characterizing their commercial activity—the conducting of a non-church-affiliated school—as the exercise of religion.[3] Cf. *De La Salle Institute* v. *United States*, 195 F. Supp. 891, 903-904 (N.D. Cal. 1961), (rejecting claim that First Amendment requires court to accept religious organization's definition of church function as controlling for tax purposes); accord, *Riker* v. *Commissioner*, 244 F. 2d 220 (9th Cir.), cert. denied, 355 U.S. 839 (1957).

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[3]Nothing in the Court's rationale in *United States* v. *Lee*, *supra*, suggests that the result there would have been different if the employer's activity had been educational, rather than agricultural and carpentering.

3. Appellee Grace Brethren Church (Br. 38) and Amicus American Jewish Congress (Br. 13-14) suggest that because the instant statutes implicate First Amendment rights, they should be subjected to strict judicial scrutiny. But in contrast to the statutes involved in the cases upon which appellee relies,[4] the unemployment tax statutes *protect* as well as burden First Amendment rights, since they protect the right of employees of religiously oriented schools not to be deprived of unemployment benefits on the basis of their religious affiliation. If Acts such as this, with a comprehensively neutral effect on First Amendment interests, were subject to strict judicial scrutiny, the practical result would be that Congress would be largely unable to legislate in this area at all. Such a result would not substantially further First Amendment interests, and would seriously limit the legislative power.

4. Amicus American Jewish Congress disputes the validity of the rationales we suggest for a statutory distinction between church affiliated schools and those with a religious orientation that are not affiliated with any specific church. Although amicus is correct in asserting that the validity of these distinctions has not been established, they are nevertheless sufficient to support the classification against the equal protection challenge. Congress is free to rely on reasonable, although unproven, distinctions. The fact that the distinctions are debatable does not mean they are arbitrary.[5]

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[4] *San Antonio Independent School District* v. *Rodriquez*, 411 U.S. 1 (1973); *Carey* v. *Brown*, 447 U.S. 455 (1980).

[5] Finally, we note that appellant California suggests (Br. 35) that the Tax Injunction Act is inapplicable because the federal government is an indispensible party to the suit, and could not be compelled to litigate the tax issue in the state courts. The error of appellant's premise is demonstrated by the fact that the federal government was not a party in *St. Martin Evangelical Lutheran Church* v. *South Dakota*, *supra*, but the case was not fatally defective for that reason.

For the foregoing reasons and the additional reasons stated in our opening brief, the judgment of the district court should be reversed.

Respectfully submitted.

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